

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation,)
Vermont Electric Cooperative, Inc., and Vermont)
Electric Power Company, Inc. for a certificate of public)
good, pursuant to 30 V.S.A. Section 248, to construct up)
to a 63 MW wind electric generation facility and)
associated facilities on Lowell Mountain in Lowell,)
Vermont, and the installation or upgrade of)
approximately 16.9 miles of transmission line and)
associated substations in Lowell, Westfield and Jay,)
Vermont)

Order entered: 7/27/2011

ORDER RE FIVE SETS OF COMPLIANCE FILINGS

INTRODUCTION

On May 31, 2011, the Public Service Board ("Board") issued an Order (the "Order") and Certificate of Public Good ("CPG") in this docket approving, subject to certain conditions, the construction and operation of the proposed wind electric generating facility. Among other things, the Order required the Petitioners to make a number of post-certification compliance filings. On June 10, 17, 20, 28 and 29, 2011, Green Mountain Power Corporation ("GMP") submitted the second through sixth sets of compliance materials for party comment and Board review. For the reasons set forth below, in this Order we approve the compliance materials as filed by GMP on the above-described dates, with the exception of the Serpentine Outcrop Management Plan, the High-Elevation Wetlands Mitigation Plan, the Noise Monitoring Plan, the Amended Decommissioning Plan, and the Forest and Wildlife Habitat Management Plan. With respect to the Serpentine Outcrop Management Plan and the Amended Decommissioning Plan, we approve them with certain specified modifications. With respect to the Noise Monitoring Plan, we clarify that Condition 41 does not require the Petitioners to obtain Board approval of the proposed plan prior to commencing construction, only that they prepare and file the plan before

construction starts, and we encourage the parties to seek to reach agreement on the contents of a plan. With respect to the High-Elevation Wetlands Mitigation Plan, we are withholding our ruling at this time to provide the parties with an opportunity to provide comments in light of two recent filings by GMP and the Towns of Albany and Craftsbury (the "Towns"). With respect to the Forest and Wildlife Habitat Management Plan, we are withholding our ruling at this time based upon the request of GMP.

The June 10, 2011 Filing

GMP's June 10, 2011, filing included: (1) a proposed Serpentine Outcrop Management Plan; (2) a proposed High-Elevation Wetlands Mitigation Plan; (3) a proposed Noise Monitoring Plan; and (4) an archaeology report.¹

1. Serpentine Outcrop Management Plan

Condition 18 of the CPG states:

GMP shall file the revised management plan for the West Farman Hill Serpentine Outcrop for Board approval prior to commencing construction of the Transmission Component.²

On June 10, 2011, GMP filed a proposed Serpentine Outcrop Management Plan to ensure the protection and sustained viability of the serpentine rock outcrop habitat and associated rare vegetation located at West Farman Hill in Lowell during construction and subsequent periodic maintenance associated with the proposed Transmission Component of the project.³ No party filed comments on the proposed plan.

In our May 31, 2011, Order, we found that the provisions of a stipulation between GMP and the Agency of Natural Resources ("ANR") addressing certain impacts to natural resources⁴ (the "Natural Resource MOU"), which include the development of a revised management plan for the West Farman Hill Serpentine Outcrop, would be protective of this rare and irreplaceable

1. The archeology report addressed the final design plans and was considered in our Order on the Petitioners' first set of compliance filings. Accordingly, it is not addressed in this Order.

2. CPG of 5/31/11 at 5.

3. GMP filing of 7/10/11 at Attachment 2.

4. Exh. GMP-ANR-1.

natural area and would avoid undue adverse impacts, provided that the plan incorporates all of the recommendations of ANR witness Sorenson as outlined in his surrebuttal testimony. One of Mr. Sorenson's recommendations was that the five-step plan to protect rare, threatened, and endangered species adopted for the National Grid G33 transmission line in Docket 7500 be incorporated into the management plan for the West Farman Hill Serpentine Outcrop.⁵ We have reviewed the proposed Serpentine Outcrop Management Plan and conclude, with one exception, that the plan incorporates all the recommendations of ANR witness Sorenson. It appears that plan has not fully incorporated all of the steps from Docket 7500, specifically the requirement that GMP and Vermont Electric Cooperative, Inc. ("VEC") agree to "use only clean fill and straw that is free of non-native invasive plants and seeds." We therefore approve the proposed serpentine outcrop management plan, with the modification that GMP and VEC are required to use only clean fill and straw that is free of non-native invasive plants and seeds.

2. High-Elevation Wetland Mitigation Plan

Condition 31 of the CPG states:

The Petitioners must provide sufficient mitigation for impacts to high-elevation wetlands. The Petitioners must file their proposed mitigation for impacts to high-elevation wetlands with the Board for approval prior to commencement of construction. Parties with standing will have two weeks, from the time the mitigation proposal is filed, to file comments and request a hearing. If a party requests the opportunity for a hearing, it must demonstrate why a hearing is necessary.

In its June 10, 2011, filing GMP included a proposed High-Elevation Wetlands Mitigation Plan for the proposed project. The mitigation plan indicates that the final project design plans decrease the amount of impact to ridgeline or high-elevation wetlands, and increases the amount of existing high-elevation wetlands to be conserved. The plan states that the overall wetlands conservation/mitigation ratio is now 17.5:1, in excess of the 15:1 guideline established by the U.S. Army Corp of Engineers.⁶ The mitigation plan includes a table that indicates the

5. *Petition of New England Power Company, d/b/a National Grid*, Docket 7500, Order of 8/3/10 at 22-23.

6. GMP filing of 7/10/11, Attachment 4 at 2.

principal functions and values of the conserved wetland parcels, and GMP states that the underlying documentation for the table is contained in its wetland permit applications.⁷

In comments filed July 1, 2011, ANR states that the proposed high-elevation mitigation plan was incorporated in the application materials for the Section 401 certification and state wetland permits that are currently under review by ANR. ANR concurs with the delineation of the additional wetlands to be conserved, and asserts that the wetlands are high value because the functions of the wetlands are for groundwater recharge/discharge and sediment/toxic retention. ANR agrees with GMP that the proposed project changes have resulted in a reduction in the impacts to wetlands.

The Towns claim that the mitigation plan does not address how the final design reduces indirect impacts to high-elevation wetlands.⁸ The Towns contend that GMP has failed to provide any analysis to support its claim that the functions and values of the conserved high-elevation wetlands are comparable to those being affected.⁹ The Towns also claim that the mitigation plan fails to demonstrate compliance with the compensation standards of Section 9.5 of the Vermont Wetland Rules ("VWR").¹⁰ The Towns further contend that GMP is relying on the Section 401 certification and Section 404 permit for mitigation, rather than supplying an analysis of how the wetlands to be conserved are comparable in function and value to the high-elevation wetlands being impacted by the project.¹¹ Lowell Mountains Group ("LMG") adopts the Towns' comments.¹²

The proposed project will result in permanent, temporary, and secondary impacts to both Class II and Class III wetlands, including high-elevation wetlands that function as headwaters. In our May 31, 2011, Order, we concluded that, without additional mitigation, the proposed project would result in a net undue adverse effect on high-elevation wetlands, and would therefore violate the VWR. We required the Petitioners to file a mitigation proposal for impacts to high-

7. GMP Response to Towns at 3.

8. Towns Comments on Second Set of Filings at 23.

9. Towns Comments on Second Set of Filings at 24-25; Towns Reply to GMP Response at 4-5.

10. Towns Comments on Second Set of Filings at 23.

11. Towns Reply to GMP Response at 5-6.

12. LMG Comments on Second Set of Filings at 1.

elevation wetlands for Board review and approval, including an analysis of how the wetlands to be conserved are comparable in function and value to those that will be impacted by the project, and to demonstrate how the proposed mitigation complies with the compensation standards of VWR 9.5.

On July 21, 2011, GMP filed a letter with the Board in which it described earthwork activities recently undertaken by Mr. Wileman, the owner of the property where the project is to be located. The earthwork did not occur on the project site itself, but occurred on a parcel of land designated for conservation as Parcel 3 in the Natural Resource MOU. The earthwork apparently resulted in the placement of fill in a Class II wetland, and earth disturbance to the edge of an existing beaver pond, inside of an applicable 50-foot Class II wetland buffer.

On July 25, 2011, the Towns filed a response letter in which they assert that the proposed wetlands mitigation may no longer be sufficient given the impacts to the Class II wetland and buffer on Parcel 3, and that the Petitioners must be required to resubmit a mitigation plan for high-elevation wetlands following a complete analysis of the impacts from the recent earthwork in Parcel 3, with parties having another opportunity to comment on the new plan.

We are withholding our ruling on the High-Elevation Wetlands Mitigation Plan at this time. In a Memorandum dated July 25, 2011, the Board Clerk's Office gave parties with standing on natural resource issues until close of business on July 29, 2011, to file comments in response to the GMP and Towns letters filed July 21 and 25, 2011, respectively.

3. Noise Monitoring Plan

Condition 41 of the CPG states:

Prior to commencement of construction, Petitioners shall prepare a Noise Monitoring Plan, subject to review by the parties and approval by the Board, which is consistent with the Plan recently approved by the Board in Docket 7156, but which extends from construction through the first two years of operations and includes: (a) monitoring for low frequency sound with the same regularity as monitoring for all frequencies; (b) a monitoring program to confirm under a variety of seasonal and climactic conditions compliance with the maximum allowable sound levels described above; (c) a means for ensuring that noise monitoring events shall be timed to coincide with those time periods when Petitioners' modeling indicates the likelihood that the noise reduced operation ("NRO") mode will be triggered; (d) monitoring reports that document every

instance when NRO mode is triggered, with a description of how NRO affected operations; (e) at the request of a homeowner, monitoring to ensure compliance with the interior noise standard; and, (f) a process for complaint resolution shall be established for the entire life of the project.

On June 10, 2011, GMP filed a proposed Noise Monitoring Plan that it contends meets the requirements of the CPG.

The Department of Public Service ("DPS") filed comments on the Noise Monitoring Plan requesting both clarifications and additions to the plan.¹³

The Towns claim that the proposed noise monitoring plan provides insufficient oversight to ensure that the project is operating within the required noise standard and leaves too many unresolved issues for Board approval.¹⁴ LMG has adopted the Towns' comments.¹⁵

In response to the Department's and the Towns' comments, GMP contends that the proposed Noise Monitoring Plan complies with Board requirements, and requests that the proposed Noise Monitoring Plan be approved with instructions that GMP discuss the various concerns with the affected parties and address them in a subsequent filing, or that the Board extend the deadline for approval of the plan beyond commencement of construction.¹⁶

Given the concerns raised by the Department, the Towns, and LMG, and GMP's offer to work with affected parties, we are not approving the proposed Noise Monitoring Plan at this time. However, while Condition 41 requires that, prior to construction, the Petitioners prepare and file the plan for review and approval, it does not specifically require GMP to obtain Board approval in order for construction to commence. Such a requirement would be unrelated to the purposes of a sound monitoring plan, which is not needed until commercial operations begin.¹⁷ Accordingly, the Parties shall have an additional 60 days from the date of today's Order to submit a proposed noise monitoring plan for Board review and approval. If the parties cannot come to a resolution, GMP shall file a revised proposed noise monitoring plan 60 days from the date of

13. Department Comments on Second Set of Filings at 3.

14. Towns Comments on Second Set of Filings at 1-2; Towns Reply to GMP Response at 4.

15. LMG Comments to Second Set of Filings at 1.

16. GMP Response at 4.

17. This is similar to the Winter Operating Protocol required by Condition 26.

today's Order and parties will have two weeks to file comments on the proposed monitoring plan. While we have provided parties with extra time to resolve issues, we require GMP to obtain Board approval of its noise monitoring plan prior to operation of the proposed project.

The June 17, 2011 Filing

GMP's June 17, 2011, filing included: (1) the Erosion Prevention and Sediment Control ("EPSC") Plan for the Transmission Component of the project;¹⁸ (2) the Transportation Plan; (3) the Winter Operating Protocol; (4) the Site Access Plan; and (5) the Amended Decommissioning Plan.

1. EPSC for the Transmission Component

Condition 33 of the CPG states:

The Petitioners shall develop erosion prevention and sediment control plans for the entire proposed project, including the Transmission Component, for approval by ANR and the Board. The plans must include plans specific to any shoreline crossings to ensure that shoreline banks will be stabilized.

GMP's June 17, 2011, filing contains the proposed EPSC Plan for the Transmission Component of the project. The filing includes maps of the Transmission Component that indicate the positions of protected natural resources, including wetlands and streams, proposed access routes, temporary stream crossings with temporary bridges, temporary access or work areas within wetlands, and notes describing EPSC measures and practices. As noted in our May 31, 2011, Order, the EPSC is part of the construction-phase stormwater discharge permit (the "INDC"). The Petitioners applied for this permit on November 12, 2010, with ANR's Department of Environmental Conservation ("DEC"). Under the Order and CPG, the Petitioners are required to obtain the INDC and file it with the Board prior to commencing any earth-disturbing activities. As part of the INDC permit review process, the Petitioners must receive ANR approval of the EPSC Plan.

18. The EPSC for the Generation Component of the project was filed with Petitioners' fourth round of compliance filings on June 20, 2011.

In a filing made on June 21, 2011, in response to the Petitioners' first set of compliance filings, ANR indicated that its Stormwater Program was reviewing the project's final design plans and would incorporate them into any final decision regarding the construction-phase and operational-phase stormwater discharge permits. No other party filed comments on the EPSC Plan for the Transmission Component.

We approve the EPSC for the Transmission Component. However, the Petitioners still must comply with the condition requiring them to obtain the INDC permit and file it with the Board prior to commencing any earth-disturbing activities at the project site.

2. Transportation Plan

Condition 6 of the CPG states:

The Petitioners shall file a complete transportation plan for Board review and approval prior to the commencement of construction activities. Parties with standing on this issue will have two weeks to file comments on the plan once it is filed.

GMP's June 17, 2011, Transportation Plan filing includes information regarding the number of truckloads that will be required to transport the turbines and associated tools and parts to the project site, the timing of travel and delivery, coordination with the Vermont Agency of Transportation, town officials, local first responders, the Department of Motor Vehicles and State Police, compliance with traffic-control measures, and the planned turbine-delivery routes. The Transportation Plan also states that GMP will be responsible for the costs of any road improvements or modifications necessary to transport the project components, and that GMP will be responsible for paying to repair any damage caused to roads by construction or oversized vehicles.

On July 1, 2011, the DPS filed comments on the Transportation Plan. The DPS questions whether the Petitioners had considered transporting the turbines by rail to Orleans, Vermont, and then by truck to the project site, which would have less impact on Vermont's roadways and traffic than the delivery routes proposed by the Petitioners. The DPS recommends that the Board require from the Petitioners documentation regarding the basis for their decision to deliver

turbine materials to the project site by truck from Bellows Falls, Vermont, and Ogdensburg, New York, rather than by rail to Orleans, and then by truck to the project site.

On July 1, 2011, GMP filed comments in response to the DPS question regarding the Transportation Plan. GMP states that there are limited locations where turbine components can be unloaded, staged, and moved to the Project site, and that Orleans is not such a location. GMP asserts that the Bellows Falls and Ogdensburg delivery locations have been selected as they will have the least impact and be the most efficient for delivery.

On July 12, 2011, GMP filed a letter representing that the DPS is satisfied with this explanation of the delivery routes.

No other party filed comments on the Transportation Plan.

The Transportation Plan is approved.

3. Winter Operating Protocol

Condition 26 of the CPG states:

Prior to commencement of construction, Petitioners shall prepare a winter operating protocol, subject to review by the parties and approval by the Board, which shall require that the proposed turbines be placed in pause mode under any of the following circumstances: (a) installed ice monitoring device(s) or heated wind sensors (installation subject to reliability testing) detect if unsafe conditions are present due to icing conditions; (b) ice accretion is recognized by the remote or on-site operator; (c) air temperature, relative humidity and other meteorological conditions at the site are conducive to ice formation; (d) air temperature is several degrees above 0 degrees Celsius after icing conditions; and (e) any other weather conditions that may result in the unsafe operation of the turbines. The winter operating protocol shall include periodic testing to document protocol performance. Parties with standing on the issue will have two weeks to comment on the winter operating protocol from the time it is filed.

GMP's June 17, 2011, Winter Operating Protocol filing includes the following requirements:

1. The wind turbines will be monitored on a 24 x 7 basis throughout the year. The turbines shall be subject to shutdown under the following climatic conditions ("Icing Conditions"):
 - a. Air temperature, relative humidity and other meteorological conditions at the site are conducive to ice formation.
 - i. Precipitation or fog in the previous 24 hours.

- ii. Temperature hovered around freezing during precipitation/fog conditions.
 - b. Air temperature is several degrees above 0 C after icing conditions have existed at the site.
 - c. Other weather conditions at the project site which appear to create an unsafe operating environment.
2. The turbines shall be shut down under the following conditions where icing is present, through automated controls, remote operator or on-site operator.
- a. Automated shutdown of the turbine when vibration or other out of balance operation is detected.
 - b. Manual shutdown by on-site operator when Icing Conditions are identified by the on-site operator or by the installed ice monitoring device providing an automated alert of Icing Conditions to remote operator.
 - c. Manual shutdown when ice accretion is recognized by the remote operator (through changes in the power output of the turbines when Icing Conditions exist) or is recognized by the on-site operator through visual detection.
3. Restarting of the turbines after an icing event. Turbines shall not be automatically restarted until a pre-startup inspection has been completed, either on-site or by remote visual inspection. Visual inspection shall verify that hazardous conditions due to icing no longer exist, based on an analysis of the following factors for each affected turbine:
- a. Ice accumulation on the ground surrounding the turbines.
 - b. Ice build-up on the blade.
 - c. Ice build-up on the nacelle and radiator.
 - d. Compacted snow on any part of the turbine.
 - e. Compacted snow formations on the ground around the turbine.
4. Monitoring techniques and methods:
- a. An ice monitoring device shall be installed at the project site.
 - b. Turbines shall be equipped with vibration detection equipment.
 - c. Remote visual inspection cameras will be installed at the project site to facilitate remote turbine restart after a shut down due to Icing Conditions.
 - d. The above ice detection equipment shall be maintained in accordance with the manufacturer's specifications to ensure accurate operation of the equipment.
5. Safety of personnel at the project site:
- a. All personnel at the project site shall adhere to the site specific safety requirements required by Vestas before approaching the turbines to verify whether the turbines can be restarted safely.
6. Evaluation and update:

- a. On-site and remote monitoring will take place on a weekly basis during months when Icing Conditions exist to evaluate effectiveness of the protocol compared with recorded weather conditions at the project site. Evaluation shall include:
 - i. Comparison of actual ice accretion on the turbine components against atmospheric conditions when ice accretion is expected to occur.
 - ii. Evaluation of the duration and speed with which ice accretion occurs during icing events.
- b. This Winter Operating Protocol shall be subject to modification, upon Board approval, as necessary to ensure that unsafe conditions are minimized at the Project site and that shut down of the turbines shall occur under the appropriate climatic conditions.

No party filed comments on the Winter Operating Protocol.

In the May 31, 2011, Order, the Board found that the risk related to ice throw from turbines is minimized by implementing a winter operating protocol with redundant systems that curtails the operation of the wind turbines during icing conditions. We conclude that GMP's Winter Operating Protocol fulfills the requirements of Condition 26 and is sufficiently protective of public health and safety from the risk of ice throw. Therefore, the Winter Operating Protocol is approved.

4. Site Access Plan

Condition 16 of the CPG states:

GMP shall file its site restoration plan, non-native invasive species monitoring plan, ridgeline restoration monitoring and management plan, site access plan, management plans for Parcels 1, 2, 3 and 4, decommissioning revegetation plan, post-construction revegetation plan, stormwater features plan, and the invasive species management plan for review and approval by the Board. Parties with standing on the relevant issues shall have two weeks from the date GMP files each plan to file any comments in response. GMP may not commence construction until it has received Board approval of these plans.

The site access restrictions were incorporated into the May 31, 2011, Order as part of the overall black bear habitat mitigation plan. Paragraph 9 of the Natural Resource MOU entered into between GMP and ANR relates to site access restrictions. Paragraph 9 states:

GMP will proceed to develop a site access plan in concert with ANR. Searsburg's public access plan will provide a guide for a development of the plan. The site access plan will be approved by ANR prior to submission to the Public Service

Board. Any site access plan developed shall restrict motorized access by the public on the access road and crane path. There shall be no public access during fall (September through and including November) and spring (April through and including May) feeding periods.

GMP's June 17, 2011, Site Access Plan filing includes the following guidelines:

1. Organized public access for purposes of touring, visiting, or otherwise accessing the project site will be prohibited during the months of April, May, September, October and November.
2. During all other months, controlled public access shall be limited to one day per week.
3. Site visits shall be conducted between 10:00 AM and 5:00 PM.
4. A Green Mountain Power representative will accompany all visitors from the public.
5. Stops along the access road or crane path where tree clearing is minimal shall be avoided.¹⁹
6. Visitors from the public shall be kept in a single, close-in group. Individuals leaving the group shall be prohibited.
7. Visits shall generally be limited to the vicinities of Turbines 5, 6, 7, 8 and 9.
8. The number of motorized vehicles on the access road and crane path shall be limited to the minimum number required to accommodate the number of visitors in a given group.
9. Unguided motorized access by the public on the access road or crane path is strictly prohibited.
10. No food is permitted during public access site visits.
11. Green Mountain Power shall maintain a visitation log that will record each public site visit and include the date of the visit, the visitors' or groups' names, and the number of persons in each group. The visitation log shall be kept at the project site. The visitation log shall be provided to the Public Service Board, Agency of Natural Resources or the Department of Public Service by January 15 annually or at other times upon request.

19. These are areas where bear tend to cross.

On July 18, 2011, ANR filed a letter with the Board stating that it had reviewed and approved the Site Access Plan. No other party filed comments on the Site Access Plan.

We find that the Site Access Plan is an appropriate part of the black bear habitat mitigation plan, is consistent with the intent of Paragraph 9 of the MOU, and meets the relevant requirement of Condition 16. Therefore, the Site Access Plan is approved.

5. Amended Decommissioning Plan

Condition 13 of the CPG states:

Prior to commencement of construction, GMP shall file a proposed decommissioning plan that incorporates the decommissioning requirements of the Vermont Agency of Natural Resource's ("ANR") Memorandum of Understanding ("MOU") in addition to the details contained in its original proposed plan. The plan shall contain a detailed estimate of the costs of decommissioning, covering all of the activities specified in the decommissioning plan. The plan shall certify that the cost estimate has been prepared by a person(s) with appropriate knowledge and experience in wind generation projects and cost estimating. The decommissioning plan may allow GMP to contribute to the decommissioning fund as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the fund may not net out the projected salvage value of the infrastructure. GMP may utilize a letter of credit to secure the full amount of the fund, and must demonstrate that the fund will be managed independently and be creditor and bankruptcy remote in the event of GMP's insolvency or business failure. The letter of credit shall be issued by an A-rated financial institution, shall name the Board as the designated beneficiary, and shall be an "irrevocable standby" letter that includes an auto-extension provision (i.e., "evergreen clause"). The decommissioning plan shall also include a decommissioning review trigger whereby if actual production falls below 50% of projected production during any consecutive two-year period, a decommissioning review is initiated. GMP, at its option, may establish a separate fund, which also must be creditor and bankruptcy remote, in which it may place the funds from the accumulated depreciation charges associated with the proposed project. As the amount in this fund grows, GMP may reduce the balance of the letter of credit in like amount such that the letter of credit secures the amount of decommissioning costs that is not secured by the balance in this fund. Both the letter of credit, and the accumulated depreciation fund, should GMP opt to establish it, shall account for inflation over time. Parties with standing on this issue shall have two weeks from the date GMP files its decommissioning plan to file any comments in response. GMP may not commence construction of the proposed project until it has received Board approval of its decommissioning plan.

GMP's June 17, 2011, Amended Decommissioning Plan filing includes a description of the plan, a description of the decommissioning process and changes made pursuant to the Board-approved Natural Resources MOU, a description of site restoration activities, a funding plan, and a cost estimate. GMP included within the Amended Decommissioning Plan its Site Restoration Plan, Ridgeline Success Plan, Post-Decommissioning Revegetation Monitoring Plan, Post-Decommissioning Invasive Species Monitoring and Control Plan and Ridgeline Stormwater Management System and Stream Culvert Decommissioning Plan. Paragraph 4.7 of the Natural Resources MOU requires ANR to review and approve each of these individual plans. On July 18, 2011, ANR filed a letter with the Board stating that it had reviewed and approved these plans.

LMG filed comments on the Amended Decommissioning Plan, asserting that the plan was "piecemeal and incomprehensible," apparently due to the fact that the final page of the plan was omitted from the June 17, 2011, filing but was later included in the June 20, 2011, filing. LMG states that the Amended Plan does not contain the "cost estimates referenced in the narrative" and that the final page, which was filed separately on June 20, 2011, shows \$5,084,250 as the amount to be funded in June 2012, but "fails to explain what other funding will be provided and when."²⁰ As a result, LMG contends that additional technical hearings are needed.

No other party filed comments on the Amended Decommissioning Plan.

LMG's position is unfounded. One need only append the final page of the Amended Decommissioning Plan's Cost Estimate,²¹ filed on June 20, 2011, to the remainder of that document, filed on June 17, 2011, to understand how the various amounts were arrived at and when they would be funded. The cost estimate calculates total decommissioning costs, including the additional activities required by the Natural Resource MOU, as \$6,100,000. GMP proposes to secure a letter of credit for \$1,015,750 prior to commencing construction.²² On or before May 15, 2012, the letter of credit would be adjusted to an amount sufficient to decommission the

20. LMG Comments Re: Petitioners' Post-CPG Filings at 4-5.

21. The Decommissioning Cost Estimate is Attachment C to the Amended Decommissioning Plan.

22. This amount is intended to be sufficient to decommission the infrastructure expected to be in place as of June 1, 2012.

Generation Component in its entirety.²³ The total decommissioning costs of \$6,100,000 less the June 1, 2012, costs of \$1,015,750 yields the remainder to be funded of \$5,084,250. LMG's comments fail to raise any significant issue with respect to the funding amount, the funding mechanism, or the timing of the funding. Accordingly, LMG has failed to demonstrate the need for any additional process.

We have reviewed the Amended Decommissioning Plan, and with the modifications described and discussed below, conclude that it complies with Condition 13 of the CPG. The Amended Decommissioning Plan incorporates the requirements of the Natural Resource MOU, has a funding mechanism that will ensure there will be sufficient funds in place to decommission the project based on the amount of infrastructure in place at any given time, accounts for inflation over time, does not net out any salvage value for project components, and will be bankruptcy and creditor remote through utilization of a letter-of-credit mechanism as allowed by Condition 13.

However, our review has led us to identify four concerns. The plan states that:

The Decommissioning Facility shall provide for payment in the event that GMP (or its successor) is unable or unwilling to commence decommissioning activities within a reasonable period of time, not to exceed ninety days, following the issuance of a final, non-appealable order by the Board for the decommissioning of the Project, issued upon the later of the end of commercial operations or at the conclusion of a permitting process for a Future CPG Project.

The language quoted above gives rise to two of the four concerns we have identified. First, the requirement that there be a "final, non-appealable order by the Board for the decommissioning of the Project" before the time limitations on GMP's willingness or ability to decommission the project are triggered is not appropriate. Board orders are not automatically stayed by the filing of a notice of appeal.²⁴ The language proposed by the Petitioners creates an automatic stay if a Board order directing decommissioning is issued, a stay that could last a significant period of time if an appeal is taken to the Vermont Supreme Court. If the Board orders that decommissioning commence, and the Petitioners believe a stay is warranted, they can seek one at that time.

23. See Amended Decommissioning Plan at Attachment B.

24. 30 V.S.A. § 12.

Second, the quoted language assumes that a Board order directing decommissioning would never be issued prior to either the end of commercial operations or the conclusion of a permitting process for a Future CPG Project. While these are two potential circumstances in which such an order might issue, there is also the possibility that an order directing decommissioning could issue earlier; specifically, in the event actual production falls below 50% of projected production in any consecutive two-year period.

Accordingly, the quoted language must be revised as follows:²⁵

The Decommissioning Facility shall provide for payment in the event that GMP (or its successor) is unable or unwilling to commence decommissioning activities within a reasonable period of time, not to exceed ninety days, following the issuance of an order by the Board for the decommissioning of the Project.

Our third concern is the absence of the decommissioning review trigger if actual production falls below 50% of projected production for any consecutive two-year period. While the Amended Decommissioning Plan allows for a Board-ordered adjustment in the expected costs of decommissioning if actual production falls below 50% of projected production for any consecutive two-year period, it does not expressly contain the decommissioning review trigger. Accordingly, the following language must be added to the Amended Decommissioning Plan:

In the event actual energy production from the Project is less than 50% of the projected energy production for the Project during any consecutive two-year period, a review before the Board shall be initiated to determine whether decommissioning is appropriate. During any such proceeding GMP (or its successor) shall have the burden of demonstrating why decommissioning should not be ordered by the Board.

Our fourth concern relates to the language in the form letter of credit submitted with the Amended Decommissioning Plan. We have identified the following necessary modifications to the letter of credit. First, the word "standby" needs to be inserted between the words "irrevocable" and "Letter of Credit" in the second line of the document. Second, the phrase "or any automatically extended Stated Expiration Date" needs to be inserted after the parenthetical "(the 'Stated Expiration Date')"

 in the seventh line of the document. Third, the phrase "is less

25. The terms of any letter of credit must provide for payment consistent with the modified language.

than" in line two of page two of the document needs to be stricken and replaced with the phrase "does not exceed." Fourth, the phrase "excluding, however, Rules 4.09(c) and 5.06(c)(I)" needs to be inserted immediately following "(ISP98)" in the second line of the final paragraph of the document to eliminate potential conflicts with the conformity requirements of the letter of credit when making demand for payment.

With the modifications identified above, the Amended Decommissioning Plan is approved. The Petitioners shall file the Amended Decommissioning Plan with the required modifications prior to commencing construction.

The June 20, 2011 Filing

GMP's June 20, 2011, filing included: (1) an EPSC Plan for the Generation Component of the project; (2) an Invasive Species Monitoring and Control Plan; and (3) a Post-Construction Revegetation Plan.²⁶

1. EPSC for the Generation Component

As noted above with respect to the June 17, 2011, filing, Condition 33 of the CPG requires the Petitioners to file an EPSC Plan for the entire project. GMP's June 20, 2011, filing contains the proposed EPSC Plan for the Generation Component of the project. As noted in our May 31, 2011, Order, the EPSC Plan is part of the INDC permit. The Petitioners applied for this permit on November 12, 2010, with the DEC.²⁷ The Order and CPG require the Petitioners to obtain the INDC and file it with the Board prior to commencing any earth-disturbing activities at the project site.²⁸ As part of the INDC permit review process, the Petitioners must receive ANR approval of the EPSC Plan. In a filing made on June 21, 2011, in response to the Petitioners' first set of compliance filings, ANR indicated that its Stormwater Program was reviewing the final design plans and would incorporate them into any final decision regarding both the construction

26. The revegetation plan was subsequently amended in a filing made June 28, 2011. The June 20, 2011, filing also included a copy of the final page from the Petitioners' decommissioning cost estimate, which was apparently omitted when the Petitioners filed their proposed decommissioning plan on June 17, 2011.

27. Docket 7628, Order of 5/31/11 at 52-53.

28. Docket 7628, Order of 5/31/11 at 55.

phase and operational-phase stormwater discharge permits.²⁹ No other party filed comments on the EPSC Plan for the Generation Component.

We approve the EPSC Plan for the Generation Component. As required by the May 31, 2011, Order the Petitioners also must file the INDC with the Board prior to commencing any earth-disturbing activities at the project site.

2. Invasive Species Monitoring and Control Plan

Condition 16 of the CPG, quoted above, requires the Petitioners to file an invasive species monitoring plan for Board review and approval. GMP's June 20, 2011, filing included the proposed Invasive Species Monitoring and Control Plan. The obligation for the plan initially arose as part of the Natural Resource MOU. Paragraph 6 of the Natural Resource MOU requires ANR to review and approve the post-construction Invasive Species Monitoring Plan, and on July 18, 2011, ANR filed a letter with the Board stating that it had reviewed and approved the proposed plan. No other party filed comments on the plan.

The Invasive Species Monitoring and Control Plan is approved.

3. Post-Construction Revegetation Plan

Condition 16 of the CPG, quoted above, also requires the filing of a Post-Construction Revegetation Plan. GMP filed the proposed plan on June 20, 2011. Subsequently, GMP filed an amended version of the proposed plan on June 28, 2011. The amendments make clear that if post-construction plantings are damaged by the operation and maintenance of the project, GMP will repair the damage.³⁰ The obligation for the Post-Construction Revegetation Plan originally arose out of the Natural Resource MOU. Paragraph 5.2 of the Natural Resource MOU requires GMP to revegetate rock fill slopes with a seed mix that is to be submitted to ANR for review and approval. The Post-Construction Revegetation Plan specifies the various seed mixtures that GMP intends to use to meet its obligations under the MOU. On July 18, 2011, ANR filed a letter

29. ANR Comments filed 6/21/11 at 2.

30. Letter, Peter H. Zamore, Esq., to Susan M. Hudson, Clerk, dated 6/28/11 at 1-2.

with the Board stating that it had reviewed and approved the proposed plan. No other party filed comments on the plan.

The Post-Construction Revegetation Plan, as amended, is approved.

The June 28, 2011 Filing

GMP's June 28, 2011, filing included: (1) draft Forms of Conservation Easements for Parcels 1, 2, 3 and 4 as required by the Natural Resource MOU; (2) an amended version of the Post-Construction Revegetation Plan;³¹ and (3) letters from the Selectboards of the Towns of Lowell, Westfield and Jay indicating no objection to the location of the two newly proposed transmission laydown areas and the temporary Jay #17 substation.³²

1. Draft Forms of Conservation Easements

GMP's June 28, 2011, filing included draft forms of conservation easements for the four mitigation parcels identified in paragraph 2 of the Natural Resource MOU. In the cover letter to the June 28, 2011, filing, the Petitioners indicate that the draft forms were developed through discussions with ANR and are in substantially the form that GMP expects them to be in upon execution. However, GMP notes that, while ANR consented to the draft forms being filed with the Board and served on the other parties, neither ANR nor the landowners had reviewed the latest drafts that were submitted to the Board as part of the June 28, 2011, compliance filing. Accordingly, GMP indicated that ANR and the landowners reserved their right to comment on the drafts when they reviewed them.

On July 14, 2011, ANR filed comments on the proposed drafts, noting some changes that it believed were necessary for the easements to be acceptable. On July 15, 2011, GMP filed a letter with the Board to clarify some of the comments offered by ANR on July 14, 2011.

31. The amended version of the revegetation plan was discussed in conjunction with GMP's June 20, 2011, filing.

32. We addressed the two new transmission laydown areas and the temporary Jay #17 substation in our Order on the Petitioners' first set of compliance filings. The Selectboard letters do not require any action on our part.

Neither the Natural Resource MOU nor our May 31, 2011, Order specifically requires Board approval of the easement documents.³³ Because Board approval of the easement documents is not expressly required by the May 31, 2011, Order, we conclude that no further action is required by the Board with respect to the draft easement forms. We expect ANR and GMP to continue to work together to develop final easement language that is acceptable to both parties. However, the Petitioners must still ensure execution and conveyance of the easements, with copies of the executed easements filed with the Board.

The June 29, 2011 Filing

The June 29, 2011, filing included the Forest and Wildlife Habitat Management Plan for Parcels 1, 2, 3 and 4 identified in the Natural Resource MOU. The obligation for the Forest and Wildlife Habitat Management Plan initially arose as part of the Natural Resource MOU. Paragraphs 2.1.2.a., 2.2.2.a. and 3.1.2.c. of the Natural Resource MOU state that the Forest and Wildlife Habitat Management Plan for Parcels 1, 2 and 4 must be reviewed and approved by ANR and the Board. The Natural Resource MOU treats Parcel 3 differently, stating that it shall be managed in accordance with U.S. Army Corps of Engineers and ANR recommendations. No development or commercial logging is allowed on Parcel 3, but timber management may be allowed at ANR's discretion.³⁴ However, the Board's May 31, 2011, Order extended the requirement for a management plan to be reviewed and approved by the Board to Parcel 3.

On July 18, 2011, ANR filed a letter with the Board stating that it had reviewed and approved the Forest and Wildlife Habitat Management Plan with respect to Parcels 1, 2 and 4. On July 20, 2011, ANR filed another letter with the Board stating that it had reviewed and approved the Forest and Wildlife Habitat Management Plan with respect to Parcel 3 as well.

On July 21, 2011, GMP filed a letter with the Board asking that the Board defer ruling on the Forest and Wildlife Habitat Management Plan until it completed negotiations with ANR regarding final language for the conservation easements for the four parcels.

33. Both ANR and Board approval is required for the forestry and wildlife habitat management plans that will apply to all four of these conserved parcels. Order and CPG of May 31, 2011, at Condition 16.

34. Exh. GMP-ANR-1 at ¶ 2.3.2.a.-b.

No other party filed any comments on the plan.

Based on GMP's June 21, 2011, request, we are not ruling on the Forest and Wildlife Habitat Management Plan at this time.

CONCLUSION

The compliance materials filed by GMP on June 10, 17, 20, 28 and 29, 2011, are approved as filed, with the exception of the Serpentine Outcrop Management Plan, the High-Elevation Wetlands Mitigation Plan, the Noise Monitoring Plan, the Amended Decommissioning Plan and the Forest and Wildlife Habitat Management Plan. With respect to the Serpentine Outcrop Management Plan and the Amended Decommissioning Plan, we approve them with the modifications discussed in this Order. A revised Serpentine Outcrop Management Plan and a revised Amended Decommissioning Plan incorporating the required modifications must be filed prior to commencement of construction. With respect to the Noise Monitoring Plan, we take no action on it at this time and encourage the parties to seek to reach agreement on the contents of a plan. With respect to the High-Elevation Wetlands Mitigation Plan, we are withholding our ruling at this time to give the parties an opportunity to provide comments in light of the letters filed by GMP and the Towns of Albany and Craftsbury on July 21 and 25, 2011, respectively. With respect to the Forest and Wildlife Habitat Management Plan, we are withholding our ruling at this time based upon the request of GMP.

SO ORDERED.

Dated at Montpelier, Vermont, this 27th day of July, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: July 27, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.